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Evaluation by the Legal and Technical Commission of applications for plans of work for exploration for polymetallic nodules

Note by the Secretariat

1. The procedure for evaluation by the Legal and Technical Commission of applications for plans of work for exploration for polymetallic nodules is set out in regulation 21 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area. In accordance with the Regulations, the Commission is required to apply the Regulations and the rules, regulations and procedures of the Authority in a uniform and non-discriminatory manner (regulation 21 (11)). Moreover, as provided for in regulation 21 (9), in considering a proposed plan of work for exploration, the Commission is required to have regard to the principles, policies and objectives relating to activities in the Area as provided for in part XI and annex III of the United Nations Convention on the Law of the Sea and the Agreement relating to the implementation of part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

2. In accordance with regulation 21 (3), the Commission is required to make objective determinations as to whether the applicant:

(a) Has complied with the provisions of the Regulations;

(b) Has given the undertakings and assurances specified in regulation 14;

(c) Possesses the financial and technical capability to carry out the proposed plan of work for exploration; and

(d) Has satisfactorily discharged its obligations in relation to any previous contract with the Authority.

3. In order to answer these questions, the Commission will need to consider the following:

(a) Has the applicant complied with the provisions of the Regulations?

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(i) Is the applicant entitled to make the application (i.e. is it one of the qualified entities specified in regulation 9 (a) or (b))?

(ii) Is the application in the proper form as required by regulation 10 and annex 2?

(iii) Is the certificate of sponsorship in the proper form (regulation 11)?

(iv) Has the applicant submitted sufficient data and information to enable the designation of the exploration area and of the reserved area as provided for in regulations 15 and 16 and in annex 2, section II?

(v) When the application concerns a reserved area, does the applicant meet the requirements of regulation 17?

(vi) Does the application contain the data and information set out in regulation 18?

(vii) Has the applicant paid the appropriate fee (regulation 19)?

(b) Has the applicant given the undertakings and assurances specified in regulation 14?

Regulation 14 requires a written undertaking to be filed.

(c) Does the applicant possess the financial and technical capability to carry out the proposed plan of work for exploration?

(i) The relevant criteria are set out in regulation 12; they vary according to the category of entities into which the applicant falls.

(ii) Does the applicant fall into the category to which regulation 12 (2) applies?

(iii) If the application is submitted by the Enterprise, does it meet the requirements of regulation 12 (3)?

(iv) If the application is submitted by a State or a state enterprise, other than an entity referred to in resolution II, paragraph 1 (a) (ii) or (iii), does it include a statement by the State or by the sponsoring State certifying that the applicant has the necessary financial resources to meet the estimated costs of the proposed plan of work for exploration (regulation 12 (4))?

(v) As provided in regulation 12 (5), for all other categories of applicants, except those referred to in regulation 12 (2), does the application include copies of audited financial statements, including balance sheets and profit-and-loss statements, for the most recent three years, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants? If the applicant is a subsidiary of another entity, does the application include copies of such financial statements of that entity and a statement from that entity, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, that the applicant will have the financial resources to carry out the plan of work for exploration? If the applicant is a newly organized entity and a certified balance sheet is not available, does the application contain a pro forma balance sheet certified by an appropriate official of the applicant? If the applicant is controlled by a State or a state enterprise, does the application

contain a statement from the State or state enterprise certifying that the applicant will have the financial resources to carry out the plan of work for exploration?

(vi) If the applicant is a partnership or consortium of entities in a joint arrangement, has the financial and technical information to assess the capabilities of the applicant been provided by each member of the partnership or consortium (regulation 12 (8))?

(vii) As provided for in regulation 12 (9), where an applicant intends to finance the proposed plan of work for exploration by borrowings, does the application include the amount of such borrowings, the repayment period and the interest rate?

(viii) As provided in regulation 12 (10), with a view to the assessment of technical capability, does the application include: (a) a general description of the applicant's previous experience, knowledge, skills, technical qualifications and expertise relevant to the proposed plan of work for exploration; (b) a general description of the equipment and methods expected to be used in carrying out the proposed plan of work for exploration and other relevant non-proprietary information about the characteristics of such technology; and (c) a general description of the applicant's financial and technical capability to respond to any incident or activity which causes serious harm to the marine environment? This applies to all applications, except as provided for in regulation 12 (2).

(d) Has the applicant satisfactorily discharged its obligations in relation to any previous contract with the Authority?

In accordance with regulation 13, where the applicant or, in the case of an application by a partnership or consortium of entities in a joint arrangement, any member of the partnership or consortium, has previously been awarded any contract with the Authority, does the application include: (a) the date of the previous contract or contracts; (b) the dates, reference numbers and titles of each report submitted to the Authority in connection with the contract or contracts; and (c) the date of termination of the contract or contracts?

4. Pursuant to regulation 21 (4), if the answers to all these questions are in the affirmative, then the Commission shall, in accordance with the requirements set forth in the Regulations and its procedures, determine whether the proposed plan of work for exploration will:

(a) Provide for effective protection of human health and safety;

(b) Provide for effective protection and preservation of the marine environment;

(c) Ensure that installations are not established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity.

5. Regulation 21 (5) provides that: "If the Commission makes the determinations specified in paragraph 3 and determines that the proposed plan of work for exploration meets the requirements of paragraph 4, the Commission shall recommend approval of the plan of work for exploration to the Council."

6. Under regulation 21 (6), the Commission shall not recommend approval of the plan of work for exploration if part or all of the area covered by the proposed plan of work for exploration is included in:

(a) A plan of work for exploration approved by the Council for polymetallic nodules; or

(b) A plan of work approved by the Council for exploration for or exploitation of other resources if such proposed plan of work for exploration for polymetallic nodules might cause undue interference with activities under such an approved plan of work for such other resources; or

(c) An area disapproved for exploitation by the Council in cases where substantial evidence indicates the risk of serious harm to the marine environment; or

(d) If the proposed plan of work for exploration has been submitted or sponsored by a State that already holds:

(i) Plans of work for exploration and exploitation or exploitation only in non-reserved areas that, together with either part of the area covered by the application, exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of either part of the area covered by the proposed plan of work;

(ii) Plans of work for exploration and exploitation or exploitation only in non-reserved areas which, taken together, constitute 2 per cent of that part of the Area which is not reserved or disapproved for exploitation pursuant to article 162, paragraph 2 (x), of the Convention.

7. Again, these are objective criteria. However, if the Commission finds that an application does not comply with the Regulations, it shall notify the applicant in writing, through the Secretary-General, indicating the reasons. The applicant may, within 45 days of such notification, amend its application. If the Commission, after further consideration, is of the view that it should not recommend approval of the plan of work for exploration, it shall so inform the applicant and provide the applicant with a further opportunity to make representations within 30 days of the receipt of such information.

8. Finally, under regulation 21 (10), the Commission is required to consider all applications expeditiously and to submit its report and recommendations to the Council at the first possible opportunity, taking into account the schedule of meetings of the Authority.